



Defendants have exercised to attempt to comply with the Order. Since the Order was issued, Defendants and their contractors (including counsel) have spent dozens of hours searching for, collecting and producing responsive documents to Plaintiffs' requests. *See* Ex. 1, ¶ 5. However, as Defendants explained both in their written objections to these requests and in response to Plaintiffs' subsequent motion to compel, responding to these requests requires collecting documents going back several years from dozens of third parties. *See id.*, ¶¶ 3-4. Despite the best efforts of Defendants, it proved impossible for Defendants to obtain all responsive documents that are in the actual possession of third parties by January 3, 2024. *See id.*, ¶ 6.

For example, RFP No. 37 seeks documents sufficient to show the number of internal investigations performed by third-party residential treatment providers, from July 1, 2019 to the present. *See* ECF No. 411, at 8 (quoting Request No. 37 in full). While Defendants have the legal right to obtain the information requested by Plaintiffs, the actual records are not in Defendants' possession, but are in the possession of 27 different third-party providers operating 63 different residential treatment programs. *See* Ex. 1, ¶¶ 3-4. Each of those programs maintains records of investigations based on individual practice, including, for example, archiving records from the period of time covered by this request. Defendants have been working diligently with the provider organizations and residential treatment programs to search for, collect and review responsive documents, but given the significant volume of information that must be gathered, the competing duties and obligations of the providers, and staffing limitations due to holiday leave, Defendants will not be able to meet the January 3, 2024 deadline to complete this production.

RFP No. 9.24 similarly seeks information that is in the possession of third parties, *i.e.*, all safety assessments and on-site reviews of children in out-of-state residential treatment programs by the Out-of-State Review and Regional Clinical Review Teams, from July 1, 2019 to the

present.<sup>2</sup> See ECF No. 411, at 7. These reviews are conducted by teams of external community members, see DHHR, *West Virginia 2023 Annual Progress and Service Review*, at 220-222, <https://dhhr.wv.gov/bss/reports/Documents/2022%20Annual%20Service%20Plan%20Review.pdf> (last visited Jan. 2, 2024), and they are coordinated and overseen by “Regional Clinical Coordinators,” who are under contract with a third-party grantee of the State (the Regional Clinical Coordinators are not state employees). Further, since July 2019, at least 555 children have been reviewed by the Regional Clinical Review Team or the Out-of-State Review Team. Accordingly, to comply with the Court’s Order, Defendants must work with the third party Regional Clinical Coordinators – each of whom maintains records based on individual preference and practice – to collect documents and assessments related to those reviews going back five years. See Ex. 1, ¶¶ 3-4. Defendants have been working diligently with the Regional Clinical Coordinators to search for, identify, collect and produce responsive documents, but given the significant volume of information that must be gathered, the competing duties and obligations of the Regional Clinical Coordinators, as well as staffing limitations due to holiday leave, Defendants will not be able to meet the January 3, 2024 deadline to complete this production. See *id.*, ¶ 6.

For the foregoing reasons, Defendants respectfully request that the Court grant Defendants’ request for an extension of time until January 24, 2024 to allow them to comply with the Court’s December 13 Order.

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<sup>2</sup> RFP No. 9.24 also sought all assessments conducted by the West Virginia Interagency Consolidated Out-of-State Monitoring Team. Defendants have completed production in response to this part of the request.

January 2, 2024

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Philip J. Peisch, hereby certify that I caused a true and correct copy of the foregoing Motion for an Extension of Time to be delivered to the following via ECF notification:

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